Study EmH-454 July 16, 1999

# Memorandum 99-35

## Compensation for Loss of Business Goodwill in Eminent Domain: Comments on Tentative Recommendation

### BACKGROUND

The Commission in February 1999 approved a tentative recommendation to clarify selected issues involved with compensation for loss of goodwill in eminent domain. The recommendation would:

(1) Make clear that the exchange of valuation data is to include compensation for loss of goodwill.

(2) Require an expert to identify the method of valuation and summarize the supporting data.

(3) Make clear that the claimed compensation for loss of goodwill is to be included in the final offer and demand of the parties.

The recommendation also solicits input on proper accounting techniques involving loss of business goodwill.

The Commission received one letter commenting on the tentative recommendation, from the Business Valuation Section of the Litigation Services Section of the California Society of Certified Public Accounts. Exhibit pp. 1-5. The letter responds to the solicitation for input on proper accounting techniques involving loss of business goodwill.

### CAPITALIZED EARNINGS AS DISTINCT VALUATION TECHNIQUE

In the course of developing the tentative recommendation, the staff's research revealed that there is no fixed method for valuing goodwill. The cases have indicated that all of the following techniques, among others, may be used:

• Capitalized value of net income or profits of business, or some similar method of calculating present value of anticipated profits. *People ex rel. Dept. of Transportation v. Leslie*, 55 Cal. App. 4th 918, 64 Cal. Rptr. 2d 252 (1997).

• Market analysis. *Community Development Comm'n v. Asaro*, 212 Cal. App. 3d 1297, 261 Cal. Rptr. 231 (1989).

• “Excess income” method. *People ex rel. Dept. of Transportation v. Muller*, 36 Cal. 3d 263, 203 Cal. Rptr. 772 (1984).

We received a letter from an attorney arguing that capitalized value is not a separate method at all, but simply a variant form of the excess earnings method; it requires that a normal return on the tangible assets of a business must be deducted before income due to intangibles is capitalized. “The vice of *Leslie’s* dictum is to suggest that lost business profits can be recovered in an eminent domain proceeding under the guise of ‘lost goodwill.’ Historically, lost business profits are not compensable in an eminent domain proceeding.” Letter from James R. Parker, Jr. (First Supp. Memo. 98-85, p.2).

The Commission solicited further comment on this point.

The Business Valuation Section asserts that capitalized value of net income or cash flow is indeed a distinct method. It can be used to determine the value of goodwill by subtracting the adjusted value of the tangible assets from total entity value. As a practical matter, the earnings approach requires fewer subjective assumptions and permits the appraiser to establish value on more empirical, quantifiable data. “In conclusion, we believe the capitalized earnings approach is a method distinct from excess earnings and in some respects is preferable in theory and practice given sufficient reliable data.” Exhibit p. 3.

The staff sees merit in both sides of this colloquy. Clearly, normal valuation techniques should be authorized. But in the eminent domain context, where property is being taken but the business itself is not ordinarily being acquired, the normal valuation techniques may require modification. **The staff would reinstate a general reference to the capitalization approach, but would emphasize the statutory limitations on compensation for loss of goodwill** — the loss is compensable only to the extent it is caused by the taking, it cannot reasonably be prevented by relocation or other steps to preserve the business goodwill, and it is not duplicated in other compensation awarded in the proceeding. Code Civ. Proc. § 1263.510.

## GOODWILL AS AN ASSET FOR PURPOSES OF CALCULATING RETURN ON ASSETS

The tentative recommendation also solicited comment on whether, under accounting practice, goodwill is considered to be an asset for purposes of calculating the return on the assets of a business.

The Business Valuation Section notes that when a business is acquired, goodwill is shown as an asset on the balance sheet, representing the difference in value between the price paid for the business and the valuation given other assets. The book value of goodwill may fluctuate thereafter, based on the fortunes of the business. Thus the historical goodwill account on a balance sheet will only receive analytical consideration as a determinant of return on invested capital.

**The staff does not think any adjustment in the Commission's proposal is required in light of this information.** The recommendation does not suggest any improper valuation techniques involving use of goodwill as an asset.

### VALUATION METHODS EMPLOYED IN EMINENT DOMAIN PROCEEDINGS

The Business Valuation Section notes that through the years the business appraisal profession has developed various valuation methods falling into three general categories — asset, income, and market approaches. The approach or approaches used may vary with the circumstances of the particular business type, location, management, and capital structure. The determination of the appropriate method is based on the professional judgment of the appraiser as to how to most accurately reflect the value of the specific business.

The Business Valuation Section recommends that specific language be added to the law giving the business appraiser discretion to select the methods of appraisal to be used on a particular eminent domain engagement. "Such discretion will ensure that the best methodologies will produce the best estimate of value in such appraisal assignments. We believe that a number of methodologies from each of the three general approaches to valuation can be used to measure the compensable goodwill in an eminent domain proceeding." Exhibit p. 4.

The staff believes that the discretion of the appraiser is recognized in cases that note a variety of appraisal techniques for determining loss of goodwill. It is also inherent in the Commission's present recommendation that the exchange of valuation data should include the method used to determine the loss of goodwill and a summary of the data supporting the opinion.

**A statute revision along the lines suggested by the Business Valuation Section could take the following form**:

**Code Civ. Proc. § 1263.510 (amended). Compensation for loss of goodwill**

1263.510. (a) The owner of a business conducted on the property taken, or on the remainder if such property is part of a larger parcel, shall be compensated for loss of goodwill if the owner proves all of the following:

(1) The loss is caused by the taking of the property or the injury to the remainder.

(2) The loss cannot reasonably be prevented by a relocation of the business or by taking steps and adopting procedures that a reasonably prudent person would take and adopt in preserving the goodwill.

(3) Compensation for the loss will not be included in payments under Section 7262 of the Government Code.

(4) Compensation for the loss will not be duplicated in the compensation otherwise awarded to the owner.

(b) Within the meaning of this article, "goodwill" consists of the benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality, and any other circumstances resulting in probable retention of old or acquisition of new patronage.

<u>(c) Loss of goodwill shall be determined by the method or methods of valuation most appropriate in the circumstances of the particular case.</u>

**Comment.** Subdivision (c) codifies the discretion of the appraiser expressed in the cases to use the most appropriate method for determining loss of goodwill in the circumstances of the particular type of business and type of acquisition. See, e.g., *People ex rel. Dept. of Transportation v. Muller*, 36 Cal. 3d 263, 203 Cal. Rptr. 772 (1984) ("excess income" method); *Community Development Comm'n v. Asaro*, 212 Cal. App. 3d 1297, 261 Cal. Rptr. 231 (1989) (market analysis); *People ex rel. Dept. of Transportation v. Leslie*, 55 Cal. App. 4th 918, 64 Cal. Rptr. 2d 252 (1997) (capitalized earnings).

It should be noted that, regardless of the method of valuation used, loss of goodwill loss is compensable only to the extent it is caused by the taking, cannot reasonably be prevented by relocation or other steps to preserve the business goodwill, and is not duplicated in other compensation awarded in the proceeding. See subdivision (a).

The method used by a valuation expert to determine the loss of goodwill and a summary of the data supporting the expert's opinion must be included in the valuation data exchanged pursuant to Section 1258.260(a)(9).

## CONCLUSION

With the revisions suggested above, the staff believes the recommendation is ready for finalization by the Commission.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

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CERTIFIED PUBLIC ACCOUNTANTS

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June 29, 1999

Law Revision Commission
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JUN 30 1999

File:______

Mr. Matthew Sterling
California Law Review Commission
4000 Middlefield Road, Room D-1
Palo Alto, California 94303-4739

RE: Goodwill Value Issues Relating to Law Review Commission

Dear Mr. Sterling:

Thank you for extending the deadline for submittal of comments on the tentative recommendation relating to compensation for loss of business goodwill in eminent domain.

The following narrative constitutes a response by the Business Valuation Section (BVS) of the Litigation Services Section of the California Society of Certified Public Accountants to the Commission's request for comments relating to compensation for loss of business goodwill in eminent domain proceedings.

We identified two questions or issues posed by the Commission:

1. "There is a question whether capitalized value of net income or profits of business, or a similar method of calculating present value of anticipated profits, is distinct from the excess income method, if properly applied excluding the value of tangible assets or the normal return on those assets."

2. "The Law Revision Commission solicits comment on whether, under accounting practice, goodwill is considered to be an asset for purposes of calculating the return on the assets of a business.

On page three, the Commission made reference to methods of valuation used in eminent domain cases. We will take that opportunity to add our recommendation as to the appraiser's discretion in use of specific valuation methods.

**1. Excess earnings method distinguished from capitalized earnings methods**

We assert that, for purposes of determining the compensable goodwill in eminent domain proceedings, a capitalized value of net income or cash flow is a method distinct from the excess income method. In several respects we believe that such a methodology is superior to the excess income method.

From a theoretical standpoint, the excess earnings method is an asset approach to business valuation within the context of all valuation approaches which attempt to determine value from an asset approach, an income approach, or a market approach.

The IRS developed the excess earnings method in 1920 in A.R.M. 34 and refined it in Revenue Ruling 68-609. The IRS called this approach a "formula" method and offered a caveat for its use when it stated that it be "used in determining the fair market value of intangible assets of a business <u>only if there is no better basis available</u> for making the determination." (Emphasis added)

We believe the IRS suggests caution in the use of this method for two fundamental reasons:

1. The appraiser must apply a number of subjective rates of return to the business' various classes of assets based on their persistence (current, fixed, other). The appraiser must then determine goodwill by selecting another rate of return for the "excess earnings." Such a series of estimations may widen the margin for error in the valuation.

2. This method makes the unlikely assumption that a reasonable investor makes a decision to buy a business based on a component method of calculating return on assets.

In contrast to the excess income method, the capitalized earnings approach in its various forms defines business value as the present value of its sustainable earnings or cash flow stream. This definition is more intuitively correct given the decision making process of a reasonable investor who measures value by the anticipated risk adjusted rate of return they receive on the totality of their investment.

In our opinion, an earnings approach to value can be used to determine the value of goodwill by subtracting the adjusted value of the tangible assets from total entity value.

As a practical matter, the earnings approach requires fewer subjective assumptions and permits the appraiser to establish value on more empirical, quantifiable data.

The following brief comparison of procedural steps in the two methods demonstrates the greater number of decision points and resulting wider margin for error in using the excess earnings method.

| **Procedure** | **Excess Earnings Method** | **Capitalized Earnings Method** |
|---|---|---|
| 1. Normalize balance sheet and income statements to reflect economic value. | X | X |
| 2. Determine capitalization rate for specific earnings stream to be used. | | X |
| 3. Determine capitalization rate for each net asset | | |
| class: Current assets. | X | |
| Fixed assets. | X | |
| Other Assets. | X | |
| 4. Determine capitalization rate for goodwill. | X | |
| 5. Estimate value of company by dividing income stream by the capitalization rate determined in Step 2. | | X |
| 6. Calculate return on net tangibles and subtract answer from normalized net income. | X | |
| 7. Calculate value of goodwill by dividing residual Earnings remaining after performing Step 6 by Goodwill capitalization rate determined in Step 4. | X | |
| 8. Add the value of goodwill determined in Step 7 to the value of net tangible assets determined in Step 1 to determine total entity value. | X | |

In conclusion, we believe the capitalized earnings approach is a method distinct from excess earnings and in some respects is preferable in theory and practice given sufficient reliable data.

**2. Under accounting practice, is goodwill an asset for purposes of calculating the return on assets of a business?**

We assumed for purposes of this response that the term "accounting practice" refers to Generally Accepted Accounting Principles as promulgated by the American Institute of Certified Public Accountants.

Goodwill as an asset of a business and recorded on its balance sheet normally derives from the purchase of the subject business wherein the allocation of the purchase price to the firm's assets results in a portion of the price being allocated to goodwill.

From an accounting perspective, goodwill is recorded at cost along with the tangible assets. As a result, the "book value" of purchased goodwill suffers the same limitations as the historical cost of the tangible assets when the company is appraised at a time other than the original acquisition date: the value of the goodwill changes with the fortunes of the business, possibly dramatically.

From an appraisal perspective, the historical goodwill account found on a subject's balance sheet will only receive consideration from an analytical standpoint as the appraiser determines the investor's return on invested capital. The appraiser would expect that the value of the historical cost of goodwill will be adjusted to reflect its current value.

**Valuation methods employed in eminent domain proceedings**

The commission states "There is no fixed method for valuing goodwill. The cases have held that the following techniques, among others, may be used:

> Market analysis
> "Excess income" method."

Through the years, the business appraisal profession developed numerous methods of valuing business enterprises. They fall into three general approaches: asset, income, and market.

These methodologies exists, we believe, to meet the need of the appraisal professional to apply the most correct method to literally countless permutations of business type, location, management, and capital structure. The methods of valuation are selected by the appraiser based on their professional judgement of how to most accurately reflect the value of the enterprise in a specific appraisal assignment.

Such decisions are based on experience, analysis, and the particular circumstances under which the valuation is being performed.

Therefore, we recommend to the Commission that specific language be placed in the law that gives the business appraiser the discretion to select the methods of appraisal to be used on a particular eminent domain engagement. Such discretion will ensure that the best methodologies will produce the best estimate of value in such appraisal assignments.

We believe that a number of methodologies from each of the three general approaches to valuation can be used to measure the compensable goodwill in an eminent domain proceeding.

Further, the compensation determined thereby will not duplicate other compensation the owner receives under other provisions of the law.

We appreciate the opportunity to make this written presentation of our comments. We would also be available to make an oral presentation to the Commission if such an opportunity arises.

Very truly yours,

BROWN ARMSTRONG RANDALL
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Jerry Randall

By: Jerry E. Randall, CPA/ABV
Member, Business Valuation Section, CSCPA

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#EmH-454

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

## Compensation for Loss of Business Goodwill in Eminent Domain: Selected Issues

February 1999

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN **May 30, 1999.**

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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## SUMMARY OF TENTATIVE RECOMMENDATION

This recommendation would clear up a number of technical questions that have arisen in connection with compensation for loss of business goodwill in eminent domain proceedings. It would make clear that the exchange of valuation data is to include compensation for loss of goodwill, and require an expert to identify the method of valuation and summarize the supporting data. And it would make clear that the claimed compensation for loss of goodwill is to be included in the final offer and demand of the parties.

The recommendation also solicits input on proper accounting techniques involving loss of business goodwill.

This recommendation was prepared pursuant to Resolution Chapter 91 of the Statutes of 1998.

# COMPENSATION FOR LOSS OF BUSINESS GOODWILL IN EMINENT DOMAIN: SELECTED ISSUES

Under the Eminent Domain Law, in addition to compensation for the value of property taken and damage to the remainder, the property owner is entitled to compensation for loss of business goodwill resulting from the taking.[1] This recommendation addresses several issues have arisen concerning application of provisions of the Eminent Domain Law to this element of compensation:

- Is data relating to compensation for loss of business goodwill required to be included in an exchange of valuation data?
- What are the proper techniques for calculation of loss of business goodwill?
- Is the parties' final offer and demand required to include compensation for loss of business goodwill?

**Exchange of Valuation Data**

The Eminent Domain Law provides for a pretrial exchange of valuation data on demand of a party.[2] The parties must provide a statement of valuation data for each witness who will testify on (1) the value of the property taken, (2) any damage or benefit to the remainder, or (3) the amount of "any other compensation required to be paid" by specified statutes, including Chapter 9 (commencing with Section 1263.010).[3] Chapter 9 includes provisions that require compensation to be paid for loss of business goodwill.[4]

Thus the statutes on their face require goodwill valuation data to be included in the data exchanged. However, a Court of Appeal opinion suggests that the statutes might be made more clear on this point. In *City of Fresno v. Harrison*,[5] the city argued that its failure to provide goodwill valuation data did not violate the statute, "since it is ambiguous whether the special eminent domain discovery statutes applied to cases for recovery of goodwill under section 1263.510."[6] This interpretation derives from the city's observation that the specific types of information required to be exchanged (which are listed in Code of Civil Procedure Section 1258.260) include factors more relevant to valuing tangible than intangible property and damage.

Code of Civil Procedure Section 1258.260 provides:

1. Code Civ. Proc. §§ 1263.510-1263.530.
2. Code Civ. Proc. §§ 1258.210-1258.300.
3. Code Civ. Proc. § 1258.250(d).
4. Code Civ. Proc. §§ 1263.510-1263.530.
5. 154 Cal. App. 3d 296, 201 Cal. Rptr. 219 (1984).
6. 154 Cal. App. 3d at 302.

1258.260. (a) The statement of valuation data shall give the name and business or residence address of the witness and shall include a statement whether the witness will testify to an opinion as to any of the matters listed in Section 1258.250 and, as to each such matter upon which he will give an opinion, what that opinion is and the following items to the extent that the opinion on such matter is based thereon:

(1) The interest being valued.

(2) The date of valuation used by the witness.

(3) The highest and best use of the property.

(4) The applicable zoning and the opinion of the witness as to the probability of any change in such zoning.

(5) The sales, contracts to sell and purchase, and leases supporting the opinion.

(6) The cost of reproduction or replacement of the existing improvements on the property, the depreciation or obsolescence the improvements have suffered, and the method of calculation used to determine depreciation.

(7) The gross income from the property, the deductions from gross income, and the resulting net income; the reasonable net rental value attributable to the land and existing improvements thereon, and the estimated gross rental income and deductions therefrom upon which such reasonable net rental value is computed; the rate of capitalization used; and the value indicated by such capitalization.

(8) If the property is a portion of a larger parcel, a description of the larger parcel and its value.

(b) With respect to each sale, contract, or lease listed under paragraph (5) of subdivision (a), the statement of valuation data shall give:

(1) The names and business or residence addresses, if known, of the parties to the transaction.

(2) The location of the property subject to the transaction.

(3) The date of the transaction.

(4) If recorded, the date of recording and the volume and page or other identification of the record of the transaction.

(5) The price and other terms and circumstances of the transaction. In lieu of stating the terms contained in any contract, lease, or other document, the statement may, if the document is available for inspection by the adverse party, state the place where and the times when it is available for inspection.

(6) The total area and shape of the property subject to the transaction.

(c) If any opinion referred to in Section 1258.250 is based in whole or in substantial part upon the opinion of another person, the statement of valuation data shall include the name and business or residence address of such other person, his business, occupation, or profession, and a statement as to the subject matter to which his opinion relates.

(d) Except when an appraisal report is used as a statement of valuation data as permitted by subdivision (e), the statement of valuation data shall include a statement, signed by the witness, that the witness has read the statement of valuation data and that it fairly and correctly states his opinions and knowledge as to the matters therein stated.

(e) An appraisal report that has been prepared by the witness which includes the information required to be included in a statement of valuation data may be used as a statement of valuation data under this article.

The Court of Appeal notes that, of the factors listed in this section, those which may apply to goodwill are (1) the interest being valued, (2) the date of valuation,

(3) the gross income, deductions and net income, and (4) the rate of capitalization and resulting value. The court states, "It is likely that section 1258.260 was written without contemplation of business goodwill valuation problems. If it is not explicit on the subject, as the trial court thought, it should be amended. However ill-fitting the words may be, the intent is clearly to expose fully the expert's opinion on the subject concerned."[7]

It is a straightforward matter to remove any uncertainty, and the Law Revision Commission recommends that this be done.

**Calculation of Loss of Goodwill**

There is no fixed method for valuing goodwill. The cases have held that the following techniques, among others, may be used:

- Market analysis.[8]
- "Excess income" method.[9]

There is a question whether capitalized value of net income or profits of business, or a similar method of calculating present value of anticipated profits,[10] is distinct from the excess income method, if properly applied excluding the value of tangible assets or the normal return on those assets.[11] **The Law Revision Commission solicits comment on whether, under accounting practice, goodwill is considered to be an asset for purposes of calculating the return on the assets of a business.**

In any event, it would be helpful to require that, in the exchange of valuation data, a goodwill valuation expert identify the method used to determine goodwill and summarize the data supporting the opinion.

**Offer and Demand**

The Eminent Domain Law requires that at least 30 days before trial, the parties file and serve on each other their final offers and demands of compensation in the proceeding.[12] The statute does not define what is included in the meaning of the term "compensation." If the plaintiff's offer is unreasonable and the defendant's demand reasonable in light of the evidence admitted and the compensation awarded in the proceeding, the defendant is entitled to litigation expenses.[13]

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7. 154 Cal. App. 3d at 302-03.
8. Community Dev. Comm'n v. Asaro, 212 Cal. App. 3d 1297, 261 Cal. Rptr. 231 (1989).
9. People *ex rel.* Dep't of Transp. v. Muller, 36 Cal. 3d 263, 203 Cal. Rptr. 772 (1984).
10. People *ex rel.* Dep't of Transp. v. Leslie, 55 Cal. App. 4th 918, 64 Cal. Rptr. 2d 252 (1997).
11. People *ex rel.* Dep't of Transp. v. Muller, 36 Cal. 3d 263, 271 n.7, 203 Cal. Rptr. 772 (1984).
12. Code Civ. Proc. § 1250.410(a).
13. Code Civ. Proc. § 1250.410(b).

At least two appellate cases have indicated that the compensation referred to in this section does not include prejudgment interest (or ordinary costs).[14] Unfortunately, these cases also include loose language (dictum) to the effect that the provision is not intended "to require the offer and demand to cover items other than the value of the part taken and damage, if any, to the remainder."[15] This interpretation would seem to exclude from coverage of the section compensation for loss of goodwill.

Notwithstanding the language in the cases, the law intends that the offer and demand include compensation for loss of goodwill. The statute should be revised to make clear that the final offer and demand should include all statutorily or constitutionally required compensation, including compensation for loss of goodwill. For purposes of clarity, each offer and demand should also indicate whether or not interest and costs are included.

### Proposed Legislation

The Commission's recommendations would be effectuated by enactment of the following measure.

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14. Coachella Valley County Water Dist. v. Dreyfuss, 91 Cal. App. 3d 949, 154 Cal. Rptr. 467 (1979); People *ex rel.* Dep't of Transp. v. Gardella Square, 200 Cal. App. 3d 559, 246 Cal. Rptr. 139 (1988).

15. 91 Cal. App. 3d at 954; 200 Cal. App. 3d at 568.

# PROPOSED LEGISLATION

**Code Civ. Proc. § 1250.410 (amended). Pretrial settlement offers**

SECTION 1. Section 1250.410 of the Code of Civil Procedure is amended to read:

1250.410. (a) At least 30 days prior to the date of the trial on issues relating to compensation, the plaintiff shall file with the court and serve on the defendant its final offer of compensation in the proceeding and the defendant shall file and serve on the plaintiff its final demand for compensation in the proceeding. The offer and the demand shall include all statutorily and constitutionally required compensation,, including compensation for loss of goodwill if any, and shall state whether interest and costs are included. Such offers and demands shall be the only offers and demands considered by the court in determining the entitlement, if any, to litigation expenses. Service shall be in the manner prescribed by Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

(b) If the court, on motion of the defendant made within 30 days after entry of judgment, finds that the offer of the plaintiff was unreasonable and that the demand of the defendant was reasonable viewed in the light of the evidence admitted and the compensation awarded in the proceeding, the costs allowed pursuant to Section 1268.710 shall include the defendant's litigation expenses. In determining the amount of such litigation expenses, the court shall consider the offer required to be made by the plaintiff pursuant to Section 7267.2 of the Government Code and any other written offers and demands filed and served prior to or during the trial.

(c) If timely made, the offers and demands as provided in subdivision (a) shall be considered by the court on the issue of determining an entitlement to litigation expenses.

**Comment.** Subdivision (a) of Section 1250.410 is amended to counteract dictum in cases to the effect that the provision is not intended to require the offer and demand to cover items other than the value of the part taken and damage, if any, to the remainder. See, e.g., Coachella Valley County Water Dist. v. Dreyfuss, 91 Cal. App. 3d 949, 154 Cal. Rptr. 467 (1979); People *ex rel.* Dep't of Transp. v. Gardella Square, 200 Cal. App. 3d 559, 246 Cal. Rptr. 139 (1988).

The amendment makes clear that the final offer and demand should include all statutorily or constitutionally required compensation, including compensation for loss of goodwill. Although interest and costs are not covered by this provision, the amendment also requires, for purposes of clarity, that each offer and demand also indicate whether or not interest and costs are included.

**Code Civ. Proc. § 1258.260 (amended). Contents of statement of valuation data**

SEC. 2. Section 1258.260 of the Code of Civil Procedure is amended to read:

1258.260. (a) The statement of valuation data shall give the name and business or residence address of the witness and shall include a statement whether the witness will testify to an opinion as to any of the matters listed in Section 1258.250 and, as to each ~~such~~ matter upon which ~~he~~ the witness will give an opinion, what that opinion is and the following items to the extent that the opinion ~~on such matter~~ is based ~~thereon~~ on them:

(1) The interest being valued.

(2) The date of valuation used by the witness.

(3) The highest and best use of the property.

(4) The applicable zoning and the opinion of the witness as to the probability of any change in ~~such~~ zoning.

(5) The sales, contracts to sell and purchase, and leases supporting the opinion.

(6) The cost of reproduction or replacement of the existing improvements on the property, the depreciation or obsolescence the improvements have suffered, and the method of calculation used to determine depreciation.

(7) The gross income from the property, the deductions from gross income, and the resulting net income; the reasonable net rental value attributable to the land and existing improvements ~~thereon~~, and the estimated gross rental income and deductions ~~therefrom~~ upon which ~~such~~ the reasonable net rental value is computed; the rate of capitalization used; and the value indicated by ~~such~~ the capitalization.

(8) If the property is a portion of a larger parcel, a description of the larger parcel and its value.

(9) If the opinion concerns loss of goodwill, the method used to determine the loss and a summary of the data supporting the opinion.

(b) With respect to each sale, contract, or lease listed under paragraph (5) of subdivision (a), the statement of valuation data shall give:

(1) The names and business or residence addresses, if known, of the parties to the transaction.

(2) The location of the property subject to the transaction.

(3) The date of the transaction.

(4) If recorded, the date of recording and the volume and page or other identification of the record of the transaction.

(5) The price and other terms and circumstances of the transaction. In lieu of stating the terms contained in any contract, lease, or other document, the statement may, if the document is available for inspection by the adverse party, state the place where and the times when it is available for inspection.

(6) The total area and shape of the property subject to the transaction.

(c) If any opinion referred to in Section 1258.250 is based in whole or in substantial part upon the opinion of another person, the statement of valuation data shall include the name and business or residence address ~~of such other person, his~~ and the business, occupation, or profession of the other person, and a statement as to the subject matter to which ~~his opinion~~ the opinion of the other person relates.

(d) Except when an appraisal report is used as a statement of valuation data as permitted by subdivision (e), the statement of valuation data shall include a statement, signed by the witness, that the witness has read the statement of valuation data and that it fairly and correctly states ~~his~~ the opinions and knowledge of the witness as to the matters ~~therein~~ stated in it.

(e) An appraisal report that has been prepared by the witness which includes the information required to be included in a statement of valuation data may be used as a statement of valuation data under this article.

**Comment.** Paragraph (9) is added to Section 1258.260(a) to make clear that the basis for an opinion as to loss of goodwill is to be included in the exchange of valuation data. This codifies the rule in *City of Fresno v. Harrison*, 154 Cal. App. 3d 296, 201 Cal. Rptr. 219 (1984).

Technical revisions are also made to the statute for consistency with contemporary statutory drafting techniques.